

## Message Text

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ACTION OES-06

INFO OCT-01 EUR-12 ISO-00 PM-04 L-03 DODE-00 NSF-01 COME-00

CG-00 DOTE-00 CIAE-00 INR-07 NSAE-00 EB-07 /041 W

----- 018089

R 271455Z AUG 76

FM AMEMBASSY OSLO

TO SECSTATE WASHDC 2365

C O N F I D E N T I A L SECTION 1 OF 2 OSLO 4181

E.O. 11652: GDS

TAGS: EWWT NO

SUBJ: PORT CLEARANCE

REF: OSLO 4027, STATE 210890

1. ENVENTS HAVE OVERTAKEN US IN REGARD TO THE SEISMIC VESSEL "MOORE". ACCORDING TO MOBILE OIL HERE THE VESSEL ENTERED NORWEGIAN WATERS FOR THREE DAYS LAST WEEK, CONDUCTED ITS RESEARCH AND DEPARTED FOR ENGLAND WITHOUT EVER ENTERING A NORWEGIAN PORT. MOBILE OIL STATES THAT IS IS NOT EXPECTED TO RETURN TO NORWAY IN THE NEAR FUTURE.

2. HOWEVER, THE BASIC ISSUE HAS NOT GONE AWAY. PRIOR TO RECEIPT OF STATE 210890, MFA'S DIRECTOR GENERAL, DEPT OF LEGAL AFFAIRS KJELL ELIASSEN TELEPHONED DCM AUGUST 25 TO INQUIRE ABOUT THE STATUS OF THE USG'S DIPLOMATIC REQUEST FOR A PORT CLEARANCE FOR "MOORE," ELIASSEN NOTED THAT HIS MINISTRY HAD GIVEN ORAL CONCURRENCE FOR THE "MOORE" BASED ON THEIR UNDERSTANDING THAT THE EMBASSY WOULD SOON SUBMIT A DIPLOMATIC NOTE FORMALLY REQUESTING PORT CLEARANCE. ELIASSEN WONDERS WHAT THE STATUS WAS OF OUR DIPLOMATIC NOTE.

3. DCM STATED THAT THERE MIGHT BE SOME MISUNDERSTANDING SINCE THE EMBASSY HAD MADE NO COMMITMENT TO SEND  
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A DIPLOMATIC NOTE. WE HAD TOLD MFA THAT WE WERE SEEK-

ING WASHINGTON'S GUIDANCE ON THIS ISSUE. THE USG  
IN NO WAY MEANT TO IMPLY DISRESPECT FOR NORWEGIAN LAW BY  
NOT FORWARDING A NOTE. WE DID FEEL, HOWEVER, THAT THERE  
WERE SOME QUESTIONS WHICH HAD TO BE ADDRESSED FIRST.  
OUR GOVERNMENT COULD SEE A NUMBER OF PROBLEMS OF  
PRINCIPLE AND PRECEDENT INVOLVED IN REQUESTING BY  
DIPLOMATIC NOTE A PORT CLEARANCE FOR A PRIVATE VESSEL  
ENGAGED IN A PRIVATE ACTIVITY. ELIASSEN, AS A LAWYER,  
WOULD UNDERSTAND POSSIBLE DIFFICULTIES SUCH A  
PRECEDENT MIGHT CAUSE OUR GOVERNMENT NOT JUST IN  
NORWAY BUT IN OTHER PLACES. DCM ALSO NOTED THAT  
WE COULD FIND NO RECORD AT THE EMBASSY THAT USG HAD PREVIOUSLY  
REQUESTED BY DIPLOMATIC NOTE SUCH A PORT CLEARANCE THOUGH WE HAD  
REQUESTED CLEARANCE FOR THE VESSEL, "STATE VICTORY," FOR ACCESS  
TO A RESTRICTED AREA IN JANUARY OF THIS YEAR. THAT  
ELIASSEN AGREED, WAS A DIFFERENT ISSUE. IN THE CASE  
OF THE "MOORE," DCM NOTED IT APPEARED THAT THERE WAS A  
DIFFERENCE OF INTERPRETATION OF WHETHER THE "MOORE"  
WAS A COMMERCIAL VESSEL FOR PURPOSES OF PARAGRAPH 8A OF THE  
ROYAL RESOLUTION OF FEBRUARY 9, 1968.

4. ELIASSEN REPLIED THAT AS THE USG COULD IMAGINE THE  
MAIN PURPOSE OF THE 1968 RESOLUTION WAS TO PROVIDE  
THE GOVERNMENT THE MEANS TO CONTROL PORT ACCESS BY EASTERN  
EUROPEAN AND SOVIET VESSELS. HE STATED THAT THE SOVIETS  
ON AT LEAST ONE OCCASION ARGUED WITH THE GOVERNMENT'S INTER-  
PRETATION OF THIS ROYAL RESOLUTION. THE RUSSIANS  
HAD ARGUED THAT THE VESSEL IN QUESTION WAS "COMMERCIAL"  
IN THE SENSE OF PARAGRAPH 8A OF THE RESOLUTION WHILE  
NORWEGIANS HAD INSISTED THAT IT WAS NOT AND THEREFORE  
WAS SUBJECT TO THE PROVISIONS OF PARAGRAPH 9 OF THE RES-  
OLUTION. ELIASSEN STATED THAT THE NORWEGIANS HAD  
ENDED THAT ARGUMENT BY TELLING THE RUSSIANS THAT  
INsofar AS NORWEGIAN LAW WAS CONCERNED, WHEN THE  
NORWEGIAN INTERPRETATION DIFFERED FROM THAT OF THE  
RUSSIANS, IT WAS CLEARLY THE NORWEGIAN INTERPRETATION  
THAT WOULD PREVAIL. HE STATED THAT THE RUSSIANS AT THAT  
POINT DROPPED THE ISSUE ENTIRELY.

5. ELIASSEN SAID HE COULD UNDERSTAND THE USG'S CONCERN  
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ON THE PRECEDENTIAL ASPECTS OF THE MATTER. THE WEST  
GERMANS HAD HAD SIMILAR PROBLEMS WITH THE PRINCIPLE OF

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ACTION OES-06

INFO OCT-01 EUR-12 ISO-00 PM-04 L-03 DODE-00 NSF-01 COME-00

CG-00 DOTE-00 CIAE-00 INR-07 NSAE-00 EB-07 /041 W

----- 028010

R 271455Z AUG 76

FM AMEMBASSY OSLO

TO SECSTATE WASHDC 2366

C O N F I D E N T I A L SECTION 2 OF 2 OSLO 4181

REQUESTING CLEARANCE BY MEANS OF DIPLOMATIC NOTES, BUT, HE ALLEGED, THE GERMANS NO LONGER HAVE THIS PROBLEM AND NOW DO REQUEST CLEARANCES BY DIPLOMATIC NOTE. (COMMENT: THE GERMAN EMBASSY CONFIRMS TO US THAT THEY DO DOUBTINELY SUBMIT PORT CLEARANCE REQUESTS BY DIPLOMATIC NOTE. SO DOES THE BRITISH EMBASSY.)

6. ELIASSEN WENT ON TO SAY THAT GIVEN THE FACT THAT THE "MOORE" HAS ALREADY ALMOST COMPLETED ITS MISSION, HE COULD UNDERSTAND THAT THE USG MIGHT NOT HAVE A REPLY BEFORE THE "MOORE" LEFT. HE IMPLIED IT WAS BEST TO SIMPLY LET THE MATTE DROP NOW AND "LET THE PEOPLE AT THE DEPARTMENT WRESTLE WITH THE QUESTION BEFORE THE NEXT TIME THE ISSUE COMES UP." DCM AGREED TO CONTACT WASHINGTON AGAIN TO SEE WHERE THE MATTER STOOD. (THIS WAS BEFORE RECEIPT OF STATE 210890.

7. COMMENT WE ARE, OF COURSE, UNABLE IN OSLO TO JUDGE THE WORLD-WIDE LEGAL IMPLICATIONS OF COMPLYING WITH THE NORWEGIAN REQUEST FOR A DIPLOMATIC NOTE. HOWEVER, WE WOULD AGREE WITH DEPARTMENT'S VIEW THAT TO REQUEST A CLEARANCE FOR A VESSEL SUCH AS THE "MOORE" WOULD APPEAR TO SET AN UNFORTUNATE PRECEDENT HERE IN OSLO, ESPECIALLY GIVEN THE FORESEEABLE INCREASE IN SUCH ACTIVITIES BY AMERICAN VESSELS AS NORWEGIAN OIL IS DEVELOPED OVER THE NEXT DECADE. OUR CONCERN IS THAT TO AGREE TO THE NORWEGIAN REQUEST AND INTERJECT THE USG INTO THE PORT REQUEST PROCESS, WE WOULD RISK IMPLYING OUR GOVERN-

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MENT'S ENDORSEMENT OF EACH VESSEL'S PROJECT. YET THE  
USG WOULD HAVE LITTLE KNOWLEDGE OF THE PRECISE NATURE  
OF EACH VESSEL'S ACTIVITIES AND, AS THE DEPARTMENT  
NOTES, NO CONTROL OVER THE ACTIVITIES. WE CAN ENVISAGE  
A SITUATION, PERHAPS UNLIKELY BUT NONETHELESS POSSIBLE,  
IN WHICH A VESSEL FOR WHICH THE USG HAD FORMALLY RE-  
QUESTED AND OBTAINED CLEARANCE PROCEEDED TO ENGAGE IN  
ACTIVITIES WHICH THE GON FOUND HARMFUL OR EVEN ILLEGAL.  
THE US MIGHT THEN BECOME ENTANGLED WITH  
THE GON ON AN ISSUE WHICH STRICTLY SPEAKING SHOULD  
REMAIN AND ISSUE BETWEEN THE U.S. COMPANY AND THE  
GON.

7. ON THE OTHER HAND THE NORWEGIAN LAW, AS ELIASSEN  
NOTES, DOES HAVE AS ITS MAJOR PRUPOSE THE CONTROL OF  
EAST EUROPEAN AND SOVIET VESSELS IN NORWEGIAN WATERS.  
FOR A VARIETY OF REASONS WE BELEIVE THIS CONTROL IS  
IN THE USG'S INTEREST AS WELL AS NORWAY'S IT COULD  
BE ARGUED THAT IF THE USG DISPUTES THE NORWEGIAN  
REQUEST FOR DIPLOMMATIC NOTES, THE EASTERN  
EUROPEANS AND SOVIETS WOULD BE STRENGTHENED IN THEIR  
INCLINATION TO CONTEST THE GON'S INTERPRETATION.  
MOREOVER, IT WOULD APPEAR THAT OUR ALLIES, THE GERMANS  
AND BRITISH, AT LEAST, DO COMPLY WITH THE NORWEGIAN  
REQUEST.

8. WE HAVE SUCCESSFULLY DUCKED THE ISSUE AS FAR AS THE  
VESSEL "MOORE" IS CONCERNED. BUT ELIASSEN MADE IT  
CLEAR THA THE GON WILL NOT LET THE ISSUE DIE. IF WE  
DECIDE TO CONTEST THE GON'S REQUEST FOR DIPLOMATIC  
INVOLVEMENT IN SUCH PORT CLEARANCES, WE SHOULD HEED  
ELIASSEN'S WARNING THAT THEN IT COMES TO INTERPRETATION  
NORWEGIAN LAY, NORWAY'S INTERPRETATION WILL BE CONCLUSIVE.  
(ARGUMENTS SUCH AS THOSE IN PARAGRAPH 3 OF STATE 210890  
THAT CONTEST THE GON'S INTERPRETATION OF ITW OWN LAW WILL NOT  
BE VERY PERSUASIVE, WE PREDICT.)  
IF WE WANT TO BUILD A CASE FOR NOT SUBMITTING DIPLOMATIC  
NOTES, IT SHOULD BE BASED NOT ON NORWEGIAN LAW BUT ON  
INTERNATIONAL LAW OR OTHER CONCERNS. WE SHOULD PRESENT  
A CASE IN CONSIDERABLE DETAIL ABOUT WHAT "STANDARD  
A CASE IN CONSIDERABLE DETAIL ABOUT WHAT "STANDARD  
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INTERNATIONAL PRACTICE" IS IN SUCH MATTERS.  
ANDERS

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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
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